



COMMONWEALTH of VIRGINIA
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TO: KARIN CLARK
Virginia Department of Social Services

FROM: MICHELLE A. L'HOMMEDIEU
Assistant Attorney General

DATE: April 16, 2013

**SUBJECT: Exempt Regulations for Submission of Financial Information for Licensure;
22VAC40-111 (3952/6549)**

I am in receipt of the attached regulations reflecting the changes in Virginia statutory law made by Chapters 182 and 545 of the *2013 Acts of the Assembly* regarding the submission of financial information for licensure. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. *2013 Acts of the Assembly*, Chapters 182 and 545, change Virginia Code § 63.2-1702 and 63.2-1707 regarding the submission of financial information for licensure, which statutory went into force upon passage. It is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority. To date, the Board has not yet acted on these regulations; and the Agency Background Document available on Town Hall reflects the as yet unknown date of Board action.

Based on the foregoing, it is my view that these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a) provided the regulations are filed with the Registrar within 90 days of the law's effective date and the

Karin Clark
April 16, 2013
Page 2

requirements of Virginia Code § 2.2-4006(B) and (C) are met. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esquire

Attachment

Project 3661 - Final

DEPARTMENT OF SOCIAL SERVICES

Information for Licensure-Family Day Homes

22VAC40-111-30. Operational responsibilities.

A. The provider shall ensure compliance with these standards and the terms of the current license issued by the department and with relevant federal, state or local laws, and other relevant regulations.

B. The provider will ensure compliance with the home's policies that have been disclosed to the parents as required by 22VAC-40-111-70.

~~C. The provider shall give evidence of financial responsibility.~~

~~D.~~ C. The provider shall be of good character and reputation. Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

~~E.~~ D. The provider shall meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

~~F.~~ E. The provider shall ensure that the home's activities, services, and facilities are conducive to the welfare of children in care.

~~G.~~ F. The provider shall be responsible for the home's day-to-day operation.

~~H.~~ G. The provider shall ensure that any advertising is not misleading or deceptive as required by § 63.2-1713 of the Code of Virginia.

~~I.~~ H. The provider shall meet the requirements specified in 22VAC40-80, General Procedures and Information for Licensure.